

1 Paul S. Jasper, Bar No. 200138  
2 Amir Gamliel, Bar No. 268121  
3 PERKINS COIE LLP  
4 505 Howard Street, Suite 1000  
5 San Francisco, CA 94105  
6 Telephone: 415.344.7000  
7 Email: PJasper@perkinscoie.com  
8 AGamliel@perkinscoie.com

6 Andrew H. Sherman (admitted *pro hac vice*)  
7 Boris I. Mankovetskiy (admitted *pro hac vice*)  
8 SILLS CUMMIS & GROSS P.C.  
9 One Riverfront Plaza  
Newark, New Jersey 07102  
Telephone: 973.643.7000  
Email: ASherman@sillscummis.com  
BMankovetskiy@sillscummis.com

10 | *Co-Counsel to the WHC Liquidation Trust*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

16 JEREMY ROSENTHAL, as Liquidation  
Trustee of the WHC LIQUIDATION TRUST,

Case No.

Plaintiff,

10

19 HALSEN HOLDINGS, LLC, a California  
20 limited liability company; SOUTH TEXAS  
21 ASSOCIATES & RESOURCES, a California  
22 corporation; PENINSULA HEALTHCARE  
23 MANAGEMENT LLC, a Nevada limited  
liability company; DANIEL BROTHMAN, an  
individual; EDITH BROTHMAN, an individual;  
24 STACY SEAN FOWLER, an individual;  
EDMUND C. KING, an individual; and DOES 1  
25 through 100, inclusive,

## COMPLAINT

## JURY TRIAL DEMANDED

26 | Defendants

1 Plaintiff Jeremy Rosenthal, as Liquidation Trustee of the WHC Liquidation Trust  
 2 (“Plaintiff”), files this complaint (the “Complaint”) against the above-captioned defendants and  
 3 alleges as follows:

4 **I. SUMMARY OF COMPLAINT**

5 1. The Debtors (as defined below) operated Watsonville Community Hospital (the  
 6 “Hospital”), a 106-bed acute care facility located in Watsonville, California, before ultimately  
 7 selling the Hospital during the course of their bankruptcy to the Pajaro Valley Healthcare District  
 8 Project.

9 2. During the time the Debtors operated the Hospital, defendants Daniel Brothman,  
 10 Stacy Sean Fowler, and Edmund C. King (collectively, the “Halsen Executives”), aided and abetted  
 11 by the other named defendants, grossly mismanaged the Hospital and engaged in a series of grossly  
 12 negligent and/or self-interested actions, and inactions, that caused WHC (defined below) to be  
 13 insolvent from the start of their stewardship as sole board members and officers. Their oversight,  
 14 or lack thereof, also resulted in a continually worsening economic catastrophe that became so  
 15 severe that it ultimately precipitated the Debtors’ commencement of chapter 11 bankruptcy cases.<sup>1</sup>

16 3. Meanwhile, during the four-year period preceding the December 5, 2021 bankruptcy  
 17 filing date (the “Petition Date”), the Halsen Executives caused the Debtors to transfer at least  
 18 \$3,965,560 to, or for the benefit of, themselves and other Defendants, who are either close family  
 19 members or friends of the Halsen Executives, or entities owned or controlled by and/or the alter  
 20 egos of, one of or more of the Halsen Executives (collectively, as set forth on Exhibit A, the  
 21 “Transfers”).

22 4. The Halsen Executives attempted to conceal the Transfers as legitimate business  
 23 expenses notwithstanding that, as to each of the Transfers, payment was made either (a) without  
 24 consideration, (b) to satisfy a financial obligation of Defendants where the Debtor that made the  
 25 Transfer did not have any shared liability, or (c) to take advantage of the Halsen Executives’

---

26 <sup>1</sup> The Debtors’ bankruptcy cases are jointly administered in the United States Bankruptcy Court for the Northern  
 27 District of California, San Jose Division, under *In re Watsonville Hospital Corporation, et. al.*, Case No. 21-51477.  
 28 The Debtors other jointly administered cases are: *In re Watsonville Healthcare Management, LLC*, Case No. 21-51478;  
*In re Watsonville Hospital Holdings, Inc.*, Case No. 21-51479; and *In re Halsen Healthcare, LLC*, Case No. 21-51480.

1 positions as WHC's sole directors and officers to enrich themselves while the Hospital they  
 2 managed was insolvent, starved for cash, delaying (or failing to make) payments owed to creditors,  
 3 and sinking further and further into grave financial distress.

4       5.       As set forth below, the Halsen Executives repeatedly breached their fiduciary duties  
 5 owed to WHC by engaging in self-dealing and failing to comply with the most basic requirements  
 6 of corporate governance.

7       6.       The Halsen Executives breached their fiduciary duties with the aid, assistance and  
 8 support of each of the other Defendants.

9       7.       Each of the Defendants was the recipient of one or more fraudulent transfers that  
 10 were directed by the Halsen Executives with fraudulent intent, including efforts to disguise the  
 11 purpose of such transactions to provide the appearance that they were payments of legitimate  
 12 business expenses.

13       8.       The Trustee brings this action on behalf of the Debtors, their Estates, and/or their  
 14 creditors, seeking the entry of a judgment, among other things: (i) avoiding and recovering the  
 15 Transfers made by the Debtors to or for the benefit of one or more of the Defendants pursuant to  
 16 11 U.S.C. §§ 544, 548, 550 and applicable state law; (ii) imposing liability on each of the Halsen  
 17 Executives for breaching their fiduciary duties owed to WHC and its stakeholders; (iii) imposing  
 18 liability on all of the Defendants for aiding and abetting a breach of their fiduciary duties; (iv)  
 19 declaring that (a) the Halsen Executives and Halsen Holdings, (b) Fowler and South Texas  
 20 Associates, and (c) King and Peninsula Healthcare are each alter egos of the other and accordingly  
 21 piercing the corporate veil; (v) granting the Trustee equitable relief as requested herein; and (vi)  
 22 granting the Trustee such other and further relief as may be just and proper.

23 **II. JURISDICTION AND VENUE**

24       9.       On December 5, 2021 ("Petition Date"), Watsonville Hospital Corporation  
 25 ("WHC") (Bankr. N.D. Cal., Case No. 21-51477), Watsonville Healthcare Management, LLC  
 26 ("WHM") (Bankr. N.D. Cal., Case No. 21-51478), Watsonville Hospital Holdings, Inc.  
 27 ("Watsonville Holdings") (Bankr. N.D. Cal., Case No. 21-51479), and Halsen Healthcare, LLC

28

1        (“Halsen Healthcare”) ( Bankr. N.D. Cal., Case No. 21-10531) each commenced a bankruptcy case  
 2        (each a “Chapter 11 Case” and, collectively, the “Chapter 11 Cases”) under Chapter 11 of the  
 3        United States Bankruptcy Code by filing a voluntary petition for relief in the United States  
 4        Bankruptcy Court for the Northern District of California (the “Bankruptcy Court”). WHC, WHM,  
 5        Watsonville Holdings, and Halsen Healthcare are each referred to as a “Debtor” and, collectively,  
 6        the “Debtors”.

7        10.      This Amended Complaint seeks the entry of money judgments against the  
 8        Defendants.

9        11.      This action arises in and relates to the Debtors' Chapter 11 Cases now pending in  
 10      the Bankruptcy Court. Accordingly, the Court has jurisdiction over this action pursuant to 28  
 11      U.S.C. § 1334.

12      12.      The Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331  
 13      because it arises under the laws of the United States.

14      13.      Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

### 15      **III. PARTIES**

16      14.      Plaintiff is the liquidation trustee for a liquidation trust established pursuant to that  
 17      certain Liquidation Trust Agreement, dated September 7, 2022, by and between the Debtors and  
 18      Jeremy Rosenthal of Force Ten Partners, LLC, as Liquidation Trustee (the “Liquidation Trustee”  
 19      or “Trustee”) under that certain *Modified First Amended Joint Chapter 11 Plan of Liquidation*  
 20      *Proposed by the Debtors and Official Committee of Unsecured Creditors* dated July 18, 2022  
 21      [Docket No. 616] (as amended, modified, and/or supplemented, the “Plan”).

22      15.      Defendant Daniel Brothman (“Brothman”) is an individual who, upon information  
 23      and belief, resides at 1872 Sharon Lane, Santa Ana, CA 92075. Among other things, Brothman is  
 24      the former Chairman of the Board and Secretary of WHC and, upon information and belief, a  
 25      member of Halsen Holdings.

26      16.      Defendant Edith Brothman (“Edith”) is an individual who, upon information and  
 27      belief, resides at 1872 Sharon Lane, Santa Ana, CA 92075. Among other things, Edith is

1 Brothman's wife.

2       17. Defendant Stacy Sean Fowler ("Fowler") is an individual who, upon information  
 3 and belief, resides at 24 Cayman Court, Manhattan Beach, CA 90266. Among other things, Fowler  
 4 is the former Chief Executive Officer, and a former member of the board, of WHC and, upon  
 5 information and belief, a member of Halsen Holdings (defined below).

6       18. Defendant Edmund C. King ("King") is an individual who, upon information and  
 7 belief, resides at 5351 N. Eagles View Dr., Lehi, UT 84043. Among other things, King is the  
 8 former Chief Financial Officer and member of the board of WHC and, upon information and belief,  
 9 a member of Halsen Holdings. (For purposes of this complaint, Brothman, Fowler and King are  
 10 referred to, collectively, as the "Halsen Executives").

11       19. Defendant Halsen Holdings, LLC ("Halsen Holdings") is, on information and belief,  
 12 a limited liability company organized in California, with a principal address of 1872 Sharon Lane,  
 13 Santa Ana, CA 92075. On information and belief, (a) Halsen Holdings holds, directly or indirectly,  
 14 100% of the equity interests of each of the Debtors and (b) Brothman, Fowler and King are among  
 15 its members.

16       20. Defendant South Texas Associates & Resources ("South Texas Associates") is, on  
 17 information and belief, a corporation formed in California, with a principal address of 24 Cayman  
 18 Court, Manhattan Beach, CA 90266. On information and belief: (a) South Texas Associates is  
 19 owned and controlled by Fowler.; (b) there exists, and at all times herein mentioned there existed,  
 20 a unity of interest and ownership between Fowler and South Texas Associates such that any  
 21 individuality and separateness between Fowler and South Texas Associates has ceased, and South  
 22 Texas Associates was, at all relevant times, and is, the alter ego of Fowler in that Fowler generally  
 23 used South Texas Associates' assets for his personal uses without maintaining corporate formalities  
 24 or separateness; and (c) Fowler completely controlled, dominated, managed, and operated South  
 25 Texas Associates and intermingled its assets with his own to suit Fowler's convenience and did so  
 26 to evade payment of the obligations owed to creditors of South Texas Associates and to defraud  
 27 Plaintiff.

28

1       21.    Defendant Peninsula Healthcare Management LLC (“Peninsula Healthcare”) is, on  
 2 information and belief, a limited liability company organized in Nevada, with a principal address  
 3 of 5351 N. Eagles View Dr., Lehi, UT 84043. On information and belief: (a) Peninsula Healthcare  
 4 is owned and controlled by King; (b) there exists, and at all times herein mentioned there existed,  
 5 a unity of interest and ownership between King and Peninsula Healthcare such that any  
 6 individuality and separateness between King and Peninsula Healthcare has ceased, and Peninsula  
 7 Healthcare was, at all relevant times, and is, the alter ego of King in that King generally used  
 8 Peninsula Healthcare’s assets for his personal uses without maintaining corporate formalities or  
 9 separateness; and (c) King completely controlled, dominated, managed, and operated Peninsula  
 10 Healthcare and intermingled its assets with his own to suit King’s convenience and did so to evade  
 11 payment of the obligations owed to creditors of Peninsula Healthcare and to defraud Plaintiff.

12       22.    On information and belief: (a) There exists, and at all times herein mentioned there  
 13 existed, a unity of interest and ownership between the Halsen Executives, on the one hand, and  
 14 Halsen Holdings, on the other hand, such that any individuality and separateness between the  
 15 Halsen Executives and Halsen Holdings, and each of them, have ceased, and Halsen Holdings was,  
 16 at all relevant times, and is, the alter ego of the Halsen Executives in that the Halsen Executives  
 17 generally used Halsen Holdings’ assets for their personal uses without maintaining corporate  
 18 formalities or separateness; and (b) the Halsen Executives completely controlled, dominated,  
 19 managed, and operated Halsen Holdings and intermingled its assets with their own to suit the  
 20 Halsen Executives’ convenience and did so to evade payment of the obligations owed to creditors  
 21 of Halsen Holdings and to defraud Plaintiff.

22 **IV. THE CHAPTER 11 CASES AND FORMATION OF WHC LIQUIDATION TRUST**

23       23.    On July 28, 2022, the Court entered the *Order Confirming Modified First Amended*  
 24 *Joint Chapter 11 Plan of Liquidation Proposed by the Debtors and Official Committee of*  
 25 *Unsecured Creditors* (the “Confirmation Order”) [Docket No. 647], confirming the Plan. The Plan  
 26 became effective on September 9, 2022 (the “Effective Date”).

27

28

1       24. On the Effective Date, the Trust was established and Jeremy Rosenthal was  
 2 appointed the Liquidation Trustee. Pursuant to Article V.G of the Plan, on the Effective Date, the  
 3 Liquidation Trustee was deemed the representative of the Debtors' bankruptcy estates in  
 4 accordance with section 1123 of the Bankruptcy Code and was granted all the rights and powers  
 5 set forth in the Liquidation Trust Agreement, including the right to prosecute, settle, or compromise  
 6 the Debtors' causes of action.

7       **V. FACTS**

8       **A. The Quorum Acquisition and MPT Secured Financing**

9       25. On September 30, 2019, Watsonville Holdings, an entity that the Halsen Executives  
 10 formed and controlled, acquired all of the issued and outstanding shares in WHC and all of the  
 11 outstanding membership interests in WHM from QHC California Holdings, LLC ("Quorum")  
 12 pursuant to an equity purchase agreement (the "Equity Purchase Agreement") dated May 31, 2019  
 13 (such transaction, the "Quorum Acquisition"). WHC owned the Hospital, while WHM provided  
 14 billing and other administrative services.

15       26. The purchase price under the Equity Purchase Agreement (including closing costs  
 16 of \$2.3 million) was approximately \$48.8 million (the "Purchase Price"), with \$43.8 million due at  
 17 closing, plus another \$5 million payable to Quorum under a note (the "Quorum Note") from  
 18 Watsonville Holdings, and guaranteed by Halsen Healthcare, with an annual interest rate of 9.25%.

19       27. In order to fund the Purchase Price for the Quorum Acquisition, Watsonville  
 20 Hospital Holding and Halsen Healthcare entered into financing transactions (collectively, the "MPT  
 21 Secured Financing") with MPT of Watsonville Lender, LLC ("MPT Lender") and its affiliate MPT  
 22 of Watsonville, LLC ("MPT Lessor" and, along with MPT Lender, "MPT") governed by a Master  
 23 Agreement dated May 31, 2019 (the "Master Agreement").

24       28. Pursuant to the Master Agreement and related agreements, MPT made a series of  
 25 secured acquisition loans to Watsonville Holdings in the aggregate amount of \$55,000,000. Those  
 26 secured acquisition loans were used by Watsonville Holdings to satisfy its obligations under the  
 27 Equity Purchase Agreement.

28

1        29. In addition, the Master Agreement required Watsonville Hospital to cause WHC to  
 2 sell the real property (the “Real Property”) owned by WHC (and on which the Hospital operated)  
 3 to MPT Lessor for \$40,000,000 immediately following the consummation of the Quorum  
 4 Acquisition, and thereafter lease such Real Property back from MPT Lessor pursuant to a Lease  
 5 Agreement dated September 30, 2019 (the “Lease Agreement”).

6        30. To secure its obligations under the Lease Agreement, WHC deposited a cash deposit  
 7 of \$2.6 million (the “Lease Deposit”) with MPT Lessor at closing of the Quorum Acquisition.

8        31. As part of the MPT Secured Financing, Watsonville Holdings executed a  
 9 promissory note, dated as of September 30, 2019 (the “Initial MPT Note”), in favor of MPT Lender  
 10 in the principal amount of \$15 million. The Initial MPT Note was assigned by Watsonville  
 11 Holdings to, and assumed by, WHC, and MPT Lender and WHC entered into an Amended and  
 12 Restated Promissory Note (the “MPT Note”) evidencing such assumed \$15 million secured loan.

13        32. On information and belief, at closing of the Quorum Acquisition, \$2 million of the  
 14 funds (the “Halsen Management Distribution”) provided by MPT Lender pursuant to the MPT  
 15 Secured Financing were distributed to the Halsen Executives directly, or indirectly after passing  
 16 through Halsen Holdings, Peninsula or South Texas, one of the Debtors, or another entity controlled  
 17 by one or more of the Halsen Executives.

18        **B. The Halsen Executives Appointed Themselves as the Sole Officers and Board  
 19 Members of WHC and Failed to Implement Systems of Independent Oversight  
 and Monitoring**

20        33. During the entirety of their terms as WHC’s officers, the Halsen Executives  
 21 constituted the entirety of WHC’s board of directors, officers, and senior leadership, while also  
 22 being members of non-Debtor and co-defendant Halsen Holdings. At all times relevant to this  
 23 complaint, Halsen Holdings held, directly or indirectly, 100% of the equity interests of each of the  
 24 Debtors. An organizational chart showing the relationship of Halsen Holdings and its direct and  
 25 indirect subsidiaries is attached as Exhibit F to this Complaint.

26        34. Immediately upon the closing of the Quorum Acquisition, the Halsen Executives  
 27 used their positions with Watsonville Holdings to appoint themselves as the sole members of

1 WHC's board of directors (the "Board") and the sole executive officers of WHC. They held the  
 2 following positions from September 30, 2019 through January 22, 2021:

- 3     • Fowler, Chief Executive Officer ("CEO") and Board member
- 4     • King, Chief Financial Officer ("CFO") and Board member
- 5     • Brothman, Secretary and Chairman of Board

7       35. During that time, the Halsen Executives exercised complete and total control over  
 8 the day-to-day operations and finances of WHC and the Hospital, with no independent oversight,  
 9 until they were removed from their positions and replaced by new directors and officers at the  
 10 direction of WHC's secured lender, MPT, on January 22, 2021. MPT caused such removal by  
 11 exercising the proxy rights it obtained in connection with the MPT Secured Financing.

12       **C. WHC Emerged From the Quorum Acquisition Insolvent and Immediately  
 13 Descended into Deeper Insolvency Due to the Halsen Executives' Grossly  
 14 Negligent Decision-making.**

15       36. WHC was insolvent upon the closing of the Quorum Acquisition due to the Halsen  
 16 Executives' decision to finance the Quorum Acquisition with 100% debt and then use WHC's  
 17 limited cash to immediately redeem notes issued by Halsen Healthcare, and pay unearned  
 18 "consulting fees" to themselves, before obtaining a working capital line.

19       37. The Quorum Acquisition was 100% debt-financed by the MPT Secured Financing  
 20 and the Quorum Note, without any other investment of capital, and without adequate working  
 21 capital reserves.

22       38. Upon closing of the Quorum Acquisition, WHC's available working capital was  
 23 woefully insufficient to meet its operational and debt service-related financial obligations. At  
 24 closing, WHC was left with approximately \$7.7 million of cash, \$20 million of debt related to the  
 25 Quorum Acquisition, and a \$40 million lease obligation to MPT.

26       39. Over the three months immediately preceding the Quorum Acquisition, WHC's net  
 27 EBITDA loss increased each month, for a total 3-month net EBITDA loss of approximately \$7.4  
 28 million.

1       40. In order to reverse, or at least lessen, that pattern of EBITDA losses, additional  
 2 investment was required. The Hospital had experienced years of neglect by its prior owner, and  
 3 declining patient volumes due to poor facility management and insufficient corporate support. The  
 4 financial viability of the Hospital, and its ability to meet financial covenants under the MPT Secured  
 5 Financing was dependent on post-closing investment in patient volume growth, streamlined  
 6 efficiencies, and expansion of service lines.

7       41. The Hospital also faced cash-flow challenges because it was overly reliant on  
 8 Medicare and Medi-Cal payments and the California Quality Assurance Fee (“QAF”) program  
 9 which provides supplemental payments to California hospitals that serve Medi-Cal and uninsured  
 10 patients. Without the QAF payments, rendering medical services to Medi-Cal and uninsured  
 11 patients would result in net losses to the Hospital. Each of those sources of payment was also  
 12 subject to regular delays and unpredictable timing.

13       42. To compound the problem, under the MPT Secured Financing, WHC was required  
 14 to apply the entirety of any QAF payments from and after January 1, 2020 to prepay down the MPT  
 15 Note until it was paid in full. This commitment of QAF proceeds that the Hospital needed for  
 16 operating liquidity further compromised the Hospital’s future sources of cash flow, and rendered it  
 17 incapable of paying its debts as they came due. In recognition of this foreseeable liquidity crisis,  
 18 an additional source of working capital was essential.

19       43. At the time the Master Agreement was executed to provide funding for the Quorum  
 20 Acquisition, MPT, Watsonville Holdings and Halsen Healthcare anticipated that WHC would  
 21 obtain approximately \$10 million in financing from MidCap Financial post-closing to provide  
 22 critical working capital. Indeed, MPT and MidCap Financial had already negotiated the terms of  
 23 an intercreditor agreement prior to the closing of the Quorum Acquisition. But the anticipated  
 24 working capital financing never materialized, causing WHC to face cash flow challenges and  
 25 insolvency immediately after the Quorum Acquisition closed, which continued throughout the  
 26 Halsen Executives’ approximately 14-month tenure as the Hospital’s management team, and  
 27  
 28

1 continued thereafter until WHC and its debtor affiliates commenced their Chapter 11 Cases on the  
 2 Petition Date.

3       44.     Almost immediately after the Quorum Acquisition closed, and before obtaining a  
 4 source of reliable working capital, the Halsen Executives began using WHC's limited cash to make  
 5 payments to themselves, entities that they controlled, and their friends and family. In just the first  
 6 few days after the Quorum Acquisition closed, the Halsen Executives directed the following  
 7 improper payments to be made:

8                 (a)     “Consulting Fees” Paid to Halsen Executives’ Entities (\$400,000). On  
 9 October 2, 2019 (just two days after the Quorum Acquisition closed), WHC paid (a) \$200,000 to  
 10 Peninsula Healthcare (an entity controlled by, and (on information and belief) the alter ego of,  
 11 King) (the “October 2, 2019 Peninsula Healthcare Transfer”) and (b) \$200,000 to South Texas  
 12 Associates (an entity controlled by, and (on information and belief) the alter ego of, Fowler) (the  
 13 “October 2, 2019 South Texas Associates Transfer” and, along with the October 2, 2019 Peninsula  
 14 Healthcare Transfer, the “October 2, 2019 Entity Transfers”), in each case for purported  
 15 “Consulting Fees.” WHC’s records do not evidence any agreement from WHC to pay such  
 16 “Consulting Fees.” On information and belief, no services were provided to WHC in exchange for  
 17 the October 2, 2019 Entity Transfers. Moreover, even if Peninsula Healthcare and/ or South Texas  
 18 Associates provided consulting services to WHC, such services would already have been owed by  
 19 Fowler and King (who controlled those entities) as part of their duties as WHC’s CEO and CFO,  
 20 respectively, and by Halsen Healthcare, as the Hospital’s manager under the Halsen MSA (as  
 21 defined below). The October 2, 2019 Entity Transfers constituted a breach of the Halsen  
 22 Executives’ fiduciary duties to WHC’s stakeholders insofar as they determined to use WHC’s  
 23 limited cash, while WHC was insolvent, to pay their owned and controlled entities for services that  
 24 were either never delivered, or already owed to WHC by Fowler, King, or Halsen Healthcare.<sup>2</sup>

25                 (b)     Investor Repayment (\$260,000). On October 3, 2019, WHC wired \$260,000  
 26

---

27                 <sup>2</sup> As discussed further below, WHC was already obligated to handsomely compensate Fowler and King as WHC’s  
 28 CEO and CFO, and to further pay a monthly “Management Fee” of \$100,000 to Halsen Healthcare (an entity that the  
 Halsen Executives indirectly owned and controlled) to provide management services.

1 (the “October 3, 2019 Brothman Transfer”) to Brothman. The wire confirmation for the October  
 2 3, 2019 Brothman Transfer indicates that the purpose of this Transfer was “Investor Repayment.”  
 3 On information and belief, \$60,000 of the October 3, 2019 Brothman Transfer was paid to redeem  
 4 (at a 20% premium) a convertible note issued by Halsen Healthcare to Brothman’s wife, Edith.  
 5 WHC did not issue such convertible note and had no obligation to pay, or redeem, amounts owed  
 6 to Edith thereunder. WHC’s books and records do not identify the basis for the other \$200,000 of  
 7 the October 3, 2019 Brothman Transfer. On information and belief (given the matching amount,  
 8 and closeness in time, to the October 2, 2019 Entity Transfers), the remaining \$200,000 of the  
 9 October 3, 2019 Brothman Transfer was paid to Brothman as “consulting fees” for services that  
 10 were either never delivered, or were already owed to WHC by either (i) Brothman as part of his  
 11 duties as Chairman of WHC’s Board of Directors and an officer of WHC or (ii) Halsen Healthcare,  
 12 as part of the management services it was obligated to provide to WHC pursuant to the Halsen  
 13 MSA. None of the October 3, 2019 Brothman Transfer paid any debt or other obligation of WHC,  
 14 and WHC did not receive any value (let alone reasonably equivalent value) for making the October  
 15 3, 2019 Brothman Transfer. The October 3, 2019 Brothman Transfer constituted a breach of the  
 16 Halsen Executives’ fiduciary duty to WHC’s stakeholders insofar as the Halsen Executives  
 17 determined to use WHC’s limited cash, while WHC was insolvent, to pay Brothman and his wife  
 18 Edith to redeem the note obligations of WHC’s parent company – Halsen Holdings – despite no  
 19 obligation to do so and to pay another \$200,000 to Brothman for unidentified consideration that,  
 20 on information and belief, was either never delivered, or was already owed to WHC by Brothman  
 21 or Halsen Healthcare.

22 (c) Improper Legal Fee Reimbursements (Total \$54,436.52). On October 3,  
 23 2019, the Halsen Executives caused WHC to pay \$54,436.52 (the “October 3, 2019 Hooper Lundy  
 24 Transfer”) to Hooper, Lundy & Bookman (“Hooper Lundy”) for legal services rendered to Halsen  
 25 Holdings in connection with the Quorum Acquisition. The Hooper Lundy legal services provided  
 26 no value (let alone reasonably equivalent value) to WHC, and WHC had no obligation to pay the  
 27 fees billed to Halsen Holdings for such services. The Halsen Executives’ decision to direct that

1 WHC make the October 3, 2019 Hooper Lundy Transfer constituted a breach of their fiduciary  
 2 duties to WHC's stakeholders insofar as the Halsen Executives determined to use WHC's limited  
 3 cash, while WHC was insolvent, to pay the legal fees of Halsen Holdings, an entity that they  
 4 controlled, despite WHC having no obligation to pay such fees.

5 (d) WHC Redeems Notes Issued by Its Corporate Parent (Total \$600,000).  
 6 Between October 2, 2019 and January 15, 2020, the Halsen Executives caused WHC to redeem  
 7 convertible notes issued by Halsen Healthcare at a 20% premium, in the total amount of \$600,000.  
 8 WHC did not issue the convertible notes and had no obligation to pay, or redeem, amounts owed  
 9 thereunder. These improper redemptions of Halsen Healthcare-issued notes included the following  
 10 payments (collectively, the "Note Redemption Transfers"):

Date	Noteholder	Amount
10/2/2019	Eli Kammerman	\$120,000
10/3/2019	Edith Brothman	\$60,000 <sup>3</sup>
12/19/2019	Minh Bui	\$240,000
1/7/2020	Tan Le	\$120,000
1/15/2020	Andy Le	\$60,000
1/15/2020	Robert Hoo	\$60,000
<b>TOTAL</b>		<b>\$660,000</b>

20 45. The Note Redemption Transfers were made without independent oversight or  
 21 approval, and during a time when WHC was cash-starved. The first of the Note Redemption  
 22 Transfers, made to Eli Kammerman in the amount of \$120,000 (the "Eli Kammerman Note  
 23 Redemption Transfer") on October 2, 2019, was made while WHC was insolvent or, alternatively,  
 24 caused WHC to become insolvent. The other \$540,000 of the Note Redemption Transfers were  
 25 made while WHC was insolvent.

26  
 27  
 28 <sup>3</sup> The Note Redemption Transfer to Edith was part of the \$260,000 October 13, 2019 Brothman Transfer.

1       46. For purposes of this Complaint, the October 2, 2019 Entity Transfers, the October  
 2 3, 2019 Brothman Transfer, the October 2, 2019 Hooper Lundy Transfer, and the Eli Kammerman  
 3 Note Redemption Transfer are referred to, collectively, as the “October 2019 Transfers.”

4       47. Each of the October 2019 Transfers were made while WHC was insolvent or,  
 5 alternatively, payment of the October 2019 Transfers caused WHC to become insolvent.

6       48. Even if WHC was not insolvent at closing, the making of the October 2019 Transfers  
 7 just a few days after closing a 100% debt-funded transaction rendered WHC insolvent.  
 8 Collectively, the October 2019 Transfers resulted in a total of \$834,436.52 of WHC’s limited cash  
 9 becoming immediately unavailable to fund the Hospital’s operations, and rendered it insolvent,  
 10 inadequately capitalized, and unable to pay its debts as they came due.

11       49. WHC’s Summary of Assets and Liabilities for Non-Individuals indicate that its  
 12 liabilities exceeded its assets by over \$33,000,000.00 on the Petition Date.

13       **D. Defendants Owed Duties of Loyalty and Care to WHC’s Stakeholders**

14       50. As a result of WHC’s insolvency (which occurred by no later than October 2, 2019  
 15 and continued through the Petition Date), the Halsen Executives owed duties of loyalty and care to  
 16 WHC’s stakeholders, including its creditors.

17       51. As directors and officers of an insolvent Delaware corporation, the Halsen  
 18 Executives owed fiduciary duties to WHC’s creditors to consider creditors’ interests in their  
 19 decision-making. In particular, Defendants owed fiduciary duties to WHC’s creditors to avoid  
 20 actions that would exacerbate WHC’s insolvency, inadequate capitalization and inability to pay its  
 21 debts as they came due.

22       52. Defendants’ decision to use WHC’s limited cash to make the October 2019  
 23 Transfers, with no benefit to WHC or its creditors, at a time when WHC was insolvent, inadequately  
 24 capitalized, starved for cash, and unable to pay its debts as they came due, was grossly negligent  
 25 and was a breach of their fiduciary duties to WHC’s creditors.

26       53. The multiple hats that the Halsen Executives wore as directors, officers, indirect  
 27 equity owners, and indirect controlling members of Halsen Healthcare, the management services

1 provider to the Hospital,<sup>4</sup> created a conflict of interest that implicated the Halsen Executives'  
 2 fiduciary duties owed to WHC and its creditors.

3       54.      In the face of that conflict of interest, the Halsen Executives neglected to put in place  
 4 any procedural or supervisory mechanisms that could have prevented WHC from engaging in the  
 5 grossly unreasonable transactions that severely harmed the Hospital during their tenure, and led to  
 6 WHC's financially distressed spiral towards bankruptcy.

7           **E.     Entry into Compensation Arrangements Without Independent Oversight and**  
 8           **Notwithstanding WHC's Cash Flow Challenges**

9       55.      Despite the Hospital's insolvency, the Halsen Executives obligated WHC to double-  
 10 pay themselves by causing WHC, effective October 1, 2019, to enter into both (a) employment  
 11 agreements to pay themselves above-market annual salaries and PTO benefits<sup>5</sup> plus "unlimited  
 12 travel and living expenses" (collectively, the "Halsen Employment Agreements") and (b) a  
 13 Management Services Agreement (the "Halsen MSA") with Halsen Healthcare which obligated  
 14 WHC to pay Halsen Healthcare (an entity they controlled) another \$100,000 per month as a  
 15 "Management Fee."<sup>6</sup> The Management Fee inured to each of the Halsen Executives' individual  
 16 benefit insofar as they controlled and had indirect ownership interests in Halsen Healthcare.

17       56.      At the time the Halsen Employment Agreements and Halsen MSA were executed,  
 18 the Halsen Executives controlled both WHC and Halsen Healthcare, and constituted WHC's entire  
 19 board and senior leadership. They used that control to implement the terms they chose in their  
 20 unfettered discretion. Indeed, the Halsen MSA was signed by Fowler on behalf of WHC and by  
 21 Brothman on behalf of Halsen Healthcare.

22       57.      Despite the conflict of interest inherent to controlling both sides of the  
 23 "negotiations" when the terms personally benefitted themselves, the Halsen Executives' decision

---

24       <sup>4</sup> Halsen Healthcare was controlled by Halsen Holdings, which in turn was controlled by the Halsen Executives in their  
 25 capacities as its majority members.

26       <sup>5</sup> The Employment Agreements obligated WHC to pay salaries to the Halsen Executives as Chairman of the Board  
 27 (Brothman), CEO (Fowler), and CFO (King) of \$340,000, \$330,000, and \$330,000, respectively. Upon termination  
 28 after a 16 month role at the Hospital, the Halsen Executives were paid a combined \$195,678 in unused PTO, split  
 evenly among them (\$65,226 each) for 16 months of service in their officer roles.

<sup>6</sup> The Halsen MSA provided for the Management Fee to be \$20,000 for the first six months and then rise to \$100,000  
 per month thereafter.

1 to cause WHC to enter into those agreements was made with no independent oversight, at a time  
 2 when they knew the anticipated working capital financing had not been obtained, and that cash was  
 3 limited.

4       58.     The Halsen Executives' decision to obligate WHC to pay the Management Fee was  
 5 a breach of their fiduciary duty to creditors because the management services to be provided by  
 6 Halsen Healthcare under the Halsen MSA should have fallen largely, if not entirely, within the  
 7 scope of the Halsen Executives' duties as WHC's Chairman of the Board, CEO, and CFO, for  
 8 which they had already obligated WHC to pay themselves lucrative salaries, PTO benefits, and  
 9 "unlimited travel and living expenses."

10       59.     These arrangements were not arms' length, and were not fair. Aside from the  
 11 double-pay obligation described above, the Halsen Executives caused WHC to unreasonably  
 12 reimburse themselves for over \$365,559 in living expenses (the "Living Expense Transfers"),  
 13 including car allowance, auto insurance, housing, groceries, dry cleaners, dining out, and more—  
 14 again all without any reasonable independent oversight or justifiable business purpose.

15       60.     As of the filing of the Complaint, Plaintiff has not found a record that the  
 16 Management Fee was paid, and therefore has not included the recovery of any such Management  
 17 Fees in its alleged damages. However, Plaintiff reserves the right to seek recovery of any amounts  
 18 paid pursuant to the Halsen MSA that are identified in the course of discovery.

19       **F.     The Halsen Executives' Management of the Hospital was Grossly Negligent**

20       61.     The Halsen Executives' failure to implement basic elements of control and oversight  
 21 at the Hospital led to numerous inexcusable errors. As a result, their tenure was marked by material  
 22 and persistent defaults under the MPT Note, and grossly negligent financial mismanagement that  
 23 materially exacerbated the Hospital's financial struggles, deepened its insolvency, and threatened  
 24 ongoing patient care.

25       62.     On April 13, 2020 (less than 7 months after the Quorum Acquisition closed), MPT  
 26 issued its first of several notices of default to the Debtors.

27  
 28

1       63.    Between January 18, 2021 and the Petition Date, the Debtors entered into a series  
 2 of forbearance agreements with MPT wherein MPT agreed to forbear from exercising various of  
 3 its remedies under its loan documents.

4       64.    The defaults under the MPT Note were never cured.

5       65.    A few non-exhaustive examples set forth below show the grossly negligent nature  
 6 of the Halsen Executives' operational and financial mismanagement of the Hospital:

7               (a)    The Halsen Executives caused WHC to hire Heroic Security ("Heroic"), a  
 8 cybersecurity company with no previous experience providing full-service IT management services  
 9 (much less doing so for a hospital) to install, maintain and service all of the Hospital's network,  
 10 internet and computer infrastructure. On information and belief, Heroic's owner was a friend of  
 11 King, and such relationship clouded the decision to put the Hospital's critical network infrastructure  
 12 at risk in order to give King's friend the chance to prove Heroic's ability to transition from a  
 13 cybersecurity company to a full-service IT management services provider, with the Hospital as the  
 14 guinea pig for the experiment. As a result of this grossly negligent adventure, the Hospital's  
 15 network was consistently unreliable and was never good enough to provide a minimally acceptable  
 16 level of performance. Severe internet and network connection issues were commonplace, and  
 17 system latencies and bandwidth deficiencies contributed to the poor performance of the Hospital's  
 18 electronic medical records system, resulting in billing and other errors further imperiling the  
 19 Hospital.

20               (b)    Their decision to hire King's friend to provide IT management services was  
 21 not the only incident of the Halsen Executives allowing the Hospital to become a guinea pig for a  
 22 vendor attempting to establish their ability to serve hospitals like Watsonville. As another  
 23 example, the Halsen Executives agreed to implement an untested and essentially beta version of a  
 24 cloud-based electronic medical record system. Disruptions, operational glitches and failures of that  
 25 medical records system resulted in further errors imperiling the Hospital.

26               (c)    The Halsen Executives grossly mismanaged the Hospital's conversion from  
 27 the Community Health Systems (CHS) version of the Hospital's medical records hosting system

1 that was in place upon closing of the Quorum Acquisition to the Hospital's own version of the  
2 medical records hosting system. They hired and relied on an independent contractor that was  
3 frequently off-site to oversee the conversion with no backup or contingency plan to address  
4 disruptions. They also failed to identify and implement service line and analytic reporting forms  
5 to replace the CHS reporting forms that were no longer accessible when the CHS transition services  
6 agreement expired. In mid-2020, that poor planning led to a period of approximately 30 days when  
7 system disruptions prevented the Hospital from billing for any of its services, leading to enormous  
8 collection problems, resulting in millions of dollars of revenue being lost.

9 (d) Settlement Payment to Chris Wheeler (Total \$282,763.90). Between  
10 September 10, 2020 and December 24, 2020, the Halsen Executives caused WHC to make  
11 payments totaling \$240,000 (the “Wheeler Settlement Transfers”) to Chris Wheeler (“Wheeler”) (a  
12 former equity holder at Halsen Holdings) pursuant to a settlement (the “Wheeler Settlement”)  
13 between Halsen Holdings, Brothman, Fowler, King, and Wheeler. The Wheeler Settlement settled  
14 all of Wheeler’s claims against Halsen Holdings and the Halsen Executives, and resulted in Halsen  
15 Holdings acquiring from Wheeler his membership interests in Halsen Holdings. But WHC was not  
16 a party to the Wheeler Settlement, received no consideration therefrom, and had no obligation to  
17 make any payment thereunder. On information and belief, the Halsen Executives also caused WHC  
18 to pay a total of no less than \$45,563.90 (the “McDermott Fee Transfer”) to McDermott Will &  
19 Emery for services rendered to Halsen Holdings and the Halsen Executives in connection with the  
20 Wheeler Settlement, and for which WHC had no obligation to pay.

21 (e) The Halsen Executives slowed or ceased payments to vendors, suppliers, and  
22 employees, and to fund employee pharmacy and medical benefit claims, and the employee pension  
23 plan at a time when they were prioritizing paying themselves above-market salaries, reimbursing  
24 themselves for exorbitant living expenses, and redeeming stock held by friends and family. These  
25 incidents of preferring paying themselves over third party creditors included (among other things):

26 (i) The Halsen Executives caused the Hospital to slow payments to  
27 vendors, resulting in an increase in accounts payable from \$8,000,000 on December 31, 2019 to

1 \$26,200,000 on December 31, 2020. This accumulation of payables resulted in vendors levying  
 2 interest and late fees, delays in securing critical patient supplies, and lost goodwill from employees,  
 3 physicians, vendors, and community stakeholders.

4 (ii) The Halsen Executives caused the Hospital to cease paying employee  
 5 pharmacy and medical benefit claims on its self-funded plan, resulting in more than \$1,800,000 in  
 6 unpaid claims, and employees and their family members being taken to collections for medical  
 7 services they expected would be covered as part of their employer-provided health insurance.

8 (iii) The Halsen Executives caused the Hospital to improperly hold on to  
 9 \$232,000 in employee payroll withholdings for union dues, life insurance, 401(k), and vision and  
 10 dental insurance.

11 (iv) The Halsen Executives caused the Hospital to fail to fund the  
 12 employee pension plan by December 31, 2020, and failed to communicate with Principal – the  
 13 plan’s actuary – of any intent to pay it before the PBGC deadline of January 31, 2021.

14 (f) The Halsen Executives caused WHC to cash an IRS refund check in the  
 15 amount of \$741,053.50 that they knew at the time had been improperly issued, exposing WHC to  
 16 IRS claims for reimbursement, interest and penalties.

17 66. On information and belief, as defaults mounted under the MPT Secured Financing,  
 18 the Halsen Executives provided financial reporting to MPT that understated just how dire the  
 19 Hospital’s circumstances were, including a growing backlog of accounts payable for staff  
 20 obligations and trade debt.

21 67. Clear and accurate reporting would have allowed MPT to identify mounting  
 22 financial distress, and address these problems through the earlier exercise of remedies. Instead,  
 23 WHC continued to operate at increasingly negative cash flow while incurring additional secured  
 24 and unsecured debt, thereby exacerbating the unsecured exposure of WHC’s trade and other  
 25 creditors.

26

27

28

68. These examples reflect an unprepared and overwhelmed management team, unreasonably operating without independent oversight that did not, or could not, exercise the care and diligence required for running a complex operation such as the Hospital.

69. And as the Hospital floundered, the Halsen Executives continued to pay themselves exorbitant salaries, living expenses, and other benefits. All of the above is evidence of grossly negligent behavior.

**G. Entry into Lucrative Severance Agreements While WHC Was Insolvent and in Anticipation of Removal by WHC's Secured Lender**

70. In August 2020, the Halsen Executives violated their fiduciary duties to WHC's stakeholders by causing WHC to enter into addendums to their employment agreements obligating WHC to pay each of them three years of compensation if their services were terminated following a change of control, and they were not offered the same position, salary or benefits at the Hospital.

71. On January 28, 2022, Fowler filed a proof of claim, No. 84, in the Chapter 11 Case of WHC asserting a general unsecured claim for \$990,000 (the “Fowler Claim”) for amounts allegedly due for severance under the addendum to his employment agreement (the “Fowler Severance Agreement”).

72. On February 6, 2022, Brothman filed a proof of claim, No. 132, in the Chapter 11 Case of WHC asserting a general unsecured claim for \$990,000 (the “Brothman Claim”) for amounts allegedly due for severance under an addendum to his employment agreement (the “Brothman Severance Agreement”).

73. On March 4, 2022, King filed a proof of claim, No. 179, in the Chapter 11 Case of WHC asserting a general unsecured claim for \$990,000 (the “King Claim”) for amounts allegedly due for severance under an addendum to his employment agreement (the “King Severance Agreement”).

74. The Brothman Severance Agreement, Fowler Severance Agreement, and King Severance Agreement are, collectively, referred to in this Complaint as the “Severance Agreements.” The Brothman Claim, Fowler Claim, and King Claim are, collectively, referred to

1 in this Complaint as the “Halsen Executive Claims.”

2 75. The Severance Agreements were insider transactions, without independent  
3 oversight, that were anything but fair and arms’ length.

4 76. Execution of the Severance Agreements also violated Sections 5 and 10 of the  
5 Subordination Agreement executed in connection with the MPT Secured Financing by increasing  
6 the compensation payable to the Halsen Executives during pendency of an event of default under  
7 the MPT Secured Financing.

8 77. The staggering amount of the Severance Agreement obligations is well above  
9 market, and patently unreasonable in light of WHC’s distressed financial situation from the time  
10 the Quorum Acquisition closed until the Petition Date.

11 78. The Severance Agreements are also highly irregular on their face insofar as they  
12 purport to award a near absolute right to severance without customary carveouts for termination for  
13 cause or failure to cooperate in the performance of their duties. Other terms and conditions  
14 customarily found in agreements of this type that would protect the interests of the corporation are  
15 also notably absent.

16 79. The timing of the Halsen Executives’ entry into the Severance Agreements was  
17 equally unreasonable. They were entered into at a time when, under the Halsen Executives’  
18 stewardship, WHC was balance sheet insolvent, failing to pay its other debts as they came due, and  
19 in default under the MPT Secured Financing agreements and the Lease Agreement.

20 80. On information and belief, the Halsen Executives failed to disclose to MPT, or to  
21 seek consent from MPT concerning, their entry into the Severance Agreements.

22 81. The Severance Agreement imposed \$3 million of new obligations on WHC without  
23 consideration (and certainly not in exchange for reasonably equivalent value). In fact, on  
24 information and belief, the Halsen Executives recognized that, because WHC was in default under  
25 the MPT Loan, there was a significant likelihood that MPT would exercise its proxy rights to  
26 remove them from their positions as officers and members of WHC’s board, and therefor executed  
27  
28

1 the Severance Agreements in an effort to both (a) deter their removal and (b) line their own pockets  
2 on the way out.

3       82. In sum, the Halsen Executives' decision to execute the Severance Agreements was  
4 a breach of their fiduciary duties to WHC's stakeholders. WHC's obligations under the Severance  
5 Agreements are also avoidable as fraudulent transfers insofar as the execution of the Severance  
6 Agreements constituted fraudulent transfers made with fraudulent intent, and were imposed without  
7 receiving reasonably equivalent value in exchange. Because each of the Halsen Executive Claims  
8 is based on obligations imposed by the Severance Agreement, each of the Halsen Executive Claims  
9 should therefore be disallowed in its entirety.

## **FIRST CAUSE OF ACTION**

## Breach of Fiduciary Duty

**(Against Defendants Brothman, King, and Fowler)**

13        83. The allegations set forth in the previous paragraphs are incorporated herein by  
14 reference as if set forth at length.

15        84.      As set forth in detail in this Complaint, each of Brothman, King, and Fowler was a  
16 member of WHC's board of directors, and a fiduciary of WHC, and its creditors, at all times  
17 relevant to this Complaint.

18        85.     As set forth in detail in this Complaint, each of Brothman, King and Fowler was an  
19 officer of WHC at all times relevant to this Complaint. The Halsen Executives also constituted the  
20 entirety of WHC's board of directors at all times relevant to this Complaint.

21       86.    Each of Brothman, King, and Fowler owed WHC fiduciary duties of care, loyalty,  
22 and good faith.

23       87.     As a result of WHC's insolvency (which occurred by no later than October 2, 2019  
24 and continued through the Petition Date), each of Brothman, King, and Fowler also owed fiduciary  
25 duties of care, loyalty, and good faith to WHC's creditors.

26        88. The duty of loyalty obligated Brothman, King, and Fowler each to commit  
27 themselves to the business of WHC with the attitude of promoting the interests of WHC and WHC's

1 creditors, and not themselves.

2       89.      The duty of loyalty is breached, *inter alia*: (a) when a fiduciary fails to act in the  
 3 face of a known duty to act, thereby demonstrating a conscious disregard for their responsibilities;  
 4 (b) when a fiduciary “abdicates” their fiduciary responsibilities; (c) when a fiduciary acts in bad  
 5 faith; and/or (d) when a fiduciary engages in self-dealing.

6       90.      The duty of care is breached, *inter alia*: (a) when a fiduciary engages in an irrational  
 7 decision-making process; and (b) when the conduct of a fiduciary rises to the level of “gross  
 8 negligence.”

9       91.      Without limiting the foregoing, each of Brothman, Fowler, and King breached his  
 10 fiduciary duties to WHC and its creditors by, among other things:

11           a.      Using \$2 million of the proceeds of the MPT Secured Financing to enrich  
 12 themselves and/or entities that they directly or indirectly owned or controlled via the Halsen  
 13 Management Distribution without having secured a reliable source of working capital, and with a  
 14 foreseeable liquidity crisis looming;

15           b.      making, or allowing to be made, improper fraudulent transfers by WHC that  
 16 totaled at least \$1,962,687.83 (in addition to the Halsen Management Distribution);

17           c.      engaging in numerous acts of self-dealing, including, but not limited to:  
 18 (i) causing WHC to pay each of Peninsula Healthcare (an entity controlled by King), South Texas  
 19 Associates (an entity controlled by Fowler), and Brothman \$200,000 shortly after the closing of the  
 20 Quorum without consideration (and certainly not for reasonably equivalent value); (ii) causing  
 21 WHC to pay at least \$100,000 of legal fees for services rendered to Halsen Holdings and Halsen  
 22 Healthcare (entities in which they had a direct or indirect ownership interest, and each of which  
 23 they controlled); (iii) causing WHC to pay \$240,000 to Chris Wheeler pursuant to a settlement that  
 24 released claims asserted against themselves and Halsen Holdings (despite the fact that WHC was  
 25 not a party to that settlement); (iv) causing WHC to redeem, at a 20% premium, convertible notes  
 26 issued by Halsen Healthcare (an entity in which they had an indirect controlling ownership interest)  
 27 in the total amount of \$660,000, including a note issued to Brothman’s wife Edith and friends of  
 28

1 the Halsen Executives, notwithstanding that WHC had no obligation to redeem such notes; (v)  
 2 causing WHC to consider personal relationships and friendships in making operational decisions,  
 3 such as, for example, hiring an unproven IT management services provider to maintain the  
 4 Hospital's critical network, internet and computer infrastructure because of the provider's owner's  
 5 friendship with King; (vi) causing WHC to (a) enter into the Halsen Employment Agreements to  
 6 pay themselves above-market annual salaries plus "unlimited travel and living expenses" and the  
 7 Halsen MSA which obligated WHC to pay Halsen Healthcare (an entity they controlled) another  
 8 \$100,000 per month as a "Management Fee" and (b) award to themselves lucrative severance  
 9 agreements in an effort to circumvent provisions in the Subordination Agreement prohibiting  
 10 increasing their compensation during an event of default under the MPT Secured Financing; and  
 11 (vii) using or allowing to be used WHC's funds to pay for over \$365,559 of their living expenses  
 12 (including car allowance, auto insurance, housing, groceries, dry cleaners, dining out, and more)  
 13 without any reasonable independent oversight or justifiable business purpose.

14                   d.        being grossly negligent in managing the Hospital's operations, including, for  
 15 example, their gross negligence in managing the Hospital's conversion from the Community Health  
 16 Systems (CHS) version of the Hospital's medical records hosting system that was in place upon  
 17 closing of the Quorum Acquisition to the Hospital's own version of the medical records hosting  
 18 system, leading to a period of approximately 30 days when system disruptions prevented WHC  
 19 from billing for any of its services, leading to enormous collection problems, resulting in millions  
 20 of dollars of revenue being lost.

21                   e.        concealing from WHC's lender, MPT: (i) the severity of WHC's financial  
 22 distress, (ii) their direction of, or consent to, WHC making the Transfers which constitute fraudulent  
 23 transfers, and (iii) their execution of the Severance Agreements;

24                   f.        failing to maintain and preserve WHC's assets and records;

25                   g.        failing to hold board meetings and/or failing to maintain minutes of any such  
 26 meetings;

27

28

h. failing to keep, or cause to be kept, accurate, complete and proper books; and

5       92.     The conduct of the Halsen Executives, as alleged in this Complaint, was intentional,  
6     reckless, and/or grossly negligent.

7       93. At all times relevant hereto, Brothman, Fowler, and King each engaged in self-  
8 dealing, prioritizing their own interests and the interests of their affiliates over the interests of WHC  
9 and its creditors.

10        94. Accordingly, the business judgment rule does not apply and Brothman, Fowler and  
11 King are subject to the entire fairness standard.

12 95. As a result of the many breaches of fiduciary duties by Brothman, Fowler and King,  
13 as set forth herein, WHC, and its creditors, suffered damages in an amount to be determined at trial.

**SECOND CAUSE OF ACTION**  
**Aiding and Abetting Breach of Fiduciary Duty**  
**(Against All Defendants)**

16        96. The allegations set forth in the previous paragraphs are incorporated herein by  
17 reference as if set forth at length.

18        97.      As set forth in detail in this Complaint, at all times relevant hereto, Brothman, King  
19 and Fowler each was an officer and member of the board of directors of WHC and owed WHC and  
20 its creditors fiduciary duties of care, loyalty and good faith.

21        98. As also set forth in detail in this Complaint, Brothman, King and Fowler each  
22 repeatedly breached his or her fiduciary duties of care, loyalty and good faith owed to WHC and  
23 its creditors.

24 99. Each of the Defendants aided and abetted these breaches of fiduciary duty.

25        100. On information and belief, each of the Defendants had knowledge that Brothman's,  
26 King's and Fowler's conduct was a breach of his or her fiduciary duties owed to WHC and its  
27 creditors.

1       101. Each of the Defendants substantially assisted and/or encouraged Brothman, King  
 2 and Fowler to breach their fiduciary duties owed to the Debtor.

3       102. Each Defendant's conduct was a substantial factor in causing the harm to Plaintiff  
 4 alleged in the previous paragraphs of this Complaint.

5       103. Each of Brothman, King and Fowler could have examined WHC's books and  
 6 records and taken steps in response to the other Halsen Executives' gross mismanagement, blatant  
 7 self-dealing, and other breaches of their fiduciary duties. Instead, each of them did nothing to  
 8 prevent the other's continuing harm to WHC and its creditors, and accepted their share of the fruits  
 9 of the others' breaches of fiduciary duty.

10       104. Defendant Halsen Holdings is a limited liability entity that is, on information and  
 11 belief, owned and controlled by Brothman, Fowler and King. Halsen Holdings aided and abetted  
 12 the Halsen Executives' breaches of fiduciary duty by, among other things, (i) accepting significant  
 13 unauthorized or improper transfers as part of the fraudulent scheme including, but not limited to,  
 14 WHC's improper payment of Halsen Holdings' obligations under the settlement agreement with  
 15 Christopher Wheeler; (ii) accepting the benefit of WHC paying legal fees owed by Halsen Holdings  
 16 to McDermott Will & Emery and Hooper Lundy; (iii) being used as an instrumentality of that  
 17 fraudulent scheme; (iv) using its indirect control of WHC to support and facilitate the Halsen  
 18 Executives' breaches of fiduciary duty; and (v) other acts and omissions as alleged in this  
 19 Complaint.

20       105. Defendant Peninsula Healthcare is, on information and belief, a limited liability  
 21 company owned and controlled by King. Peninsula Healthcare aided and abetted the Halsen  
 22 Executives' breaches of fiduciary duty by, among other things, (i) accepting significant  
 23 unauthorized or improper transfers as part of the fraudulent scheme including, but not limited to,  
 24 WHC's improper payment of \$200,000 to Peninsula Healthcare just days after closing of the  
 25 Quorum Acquisition; (ii) being used as an instrumentality of that fraudulent scheme; and (iii) other  
 26 acts and omissions as alleged in this Complaint.

27  
 28

1       106. Defendant South Texas Associates is, on information and belief, a corporation  
2 controlled by Fowler. South Texas Associates aided and abetted the Halsen Executive's breaches  
3 of fiduciary duty by, among other things, (i) accepting significant unauthorized or improper  
4 transfers as part of the fraudulent scheme including, but not limited to, WHC's improper payment  
5 of \$200,000 to South Texas Associates just days after closing of the Quorum Acquisition; (ii) being  
6 used as an instrumentality of that fraudulent scheme; and (iii) other acts and omissions as alleged  
7 in this Complaint.

8       107. Edith is Brothman's wife and aided and abetted the Halsen Executives' breaches of  
9 fiduciary duty by, among other things, (i) accepting significant unauthorized or improper transfers  
10 as part of the fraudulent scheme including, but not limited to, WHC's improper redemption of the  
11 convertible note issued to her by Halsen Healthcare just days after closing of the Quorum  
12 Acquisition; (ii) being used as an instrumentality of that fraudulent scheme; and (iii) other acts and  
13 omissions as alleged in this Complaint.

14        108. As a result of each Defendant's aiding and abetting of the breaches of fiduciary duty  
15 by the Halsen Executives as set forth herein, WHC and its creditors suffered damages in an amount  
16 to be determined at trial.

### **THIRD CAUSE OF ACTION**

**Avoidance of Constructively Fraudulent Transfers Under  
11 U.S.C. § 548 (a)(1)(B)(i) and (ii)( I), (II), and/or (III)  
(Against all Defendants)**

20       109. The allegations set forth in the previous paragraphs are incorporated herein by  
21 reference as if set forth at length.

22        110. Each of the Transfers listed in Exhibit C hereto (the “Two Year Transfers”) was  
23 made by one of the Debtors and constitutes a transfer of a debtor’s interest in property to one or  
24 more of the Defendants within two (2) years of the Petition Date. Exhibit C identifies the date,  
25 amount, and recipient of each of the Two Year Transfers.

26 111. WHC did not receive reasonably equivalent value in exchange for any of the Two  
27 Year Transfers.

1       112. At the time it made each of the Two Year Transfers, WHC (a) was insolvent or  
2       became insolvent as the result of the transfer, (b) was engaged in a business or a transaction, or  
3       about to engage in business or transaction, for which any property remaining with WHC was an  
4       unreasonably small capital, or (c) intended to incur, or believed that it would incur, debts that would  
5       be beyond its ability to pay as such debts matured. Each of the Two Year Transfers is avoidable  
6       under 11 U.S.C. § 548(a)(1)(B)(i) and (ii)(I), (II), and/or (III).

7       113. Under 11 U.S.C. § 550, the Trustee may recover each of the Two Year Transfers or  
8 their value from the transferee or a subsequent transferee, and may avoid the obligations incurred  
9 pursuant to the severance agreements.

10       114. Accordingly, Plaintiff is entitled to a judgment against Defendants and any  
11 subsequent transferees for the Transfers in an amount not less than \$630,941.

## **FOURTH CAUSE OF ACTION**

**Avoidance of Employment Transfers Under 11 U.S.C. § 548 (a)(1)(B)(i) and (ii)(IV)  
(Against Defendants Brothman, King, and Fowler)**

15        115. The allegations set forth in the previous paragraphs are incorporated herein by  
16 reference as if set forth at length.

17        116. Each of the Transfers listed in Exhibit D hereto (the “Employment Contract  
18 Transfers”) was made by one of the Debtors and constitutes a transfer of a debtor’s interest in  
19 property to one or more of the Defendants within two (2) years of the Petition Date. Exhibit D  
20 identifies the date, amount, and recipient of each of the Employment Contract Transfers.

117. The Employment Contract Transfers to Defendants (which include reimbursement  
of the Halsen Executives for personal expenses unrelated to the operation of the Hospital) constitute  
transfers made and/or obligations incurred for the benefit of an insider under an employment  
contract and not in the ordinary course of business.

25 118. WHC's entry into the Severance Agreements with the Halsen Executives occurred  
26 within two (2) years of the Petition Date and resulted in the incurrence of an obligation, to or for  
27 the benefit of an insider, under an employment contract and not in the ordinary course of business.

1 119. WHC did not receive reasonably equivalent value in exchange for the Employment  
2 Contract Transfers, for its entry into the Severance Agreements, and for its reimbursement of the  
3 Halsen Executives for personal expenses unrelated to the operation of the Hospital.

4 120. Each of the Employment Contract Transfers and WHC's entry into the Severance  
5 Agreements are avoidable under 11 U.S.C. § 548(a)(1)(B)(i) and (ii)(IV).

121. Under 11 U.S.C. § 550, the Trustee may recover the Employment Contract Transfers  
or their value from the transferee or a subsequent transferee, and may avoid the obligations imposed  
on WHC by the Severance Agreements.

9       122. Accordingly, Plaintiff is entitled to a judgment against Defendants and any  
10 subsequent transferees for the Transfers in an amount not less than \$345,376.85 and voiding  
11 WHC's obligations under the Severance Agreements.

## **FIFTH CAUSE OF ACTION**

## **Avoidance of Fraudulent Transfers Made with Actual Fraudulent Intent**

**Pursuant to 11 U.S.C. § 548(a)(1)(A)**

## Against All Defendants

15        123. The allegations set forth in the previous paragraphs are incorporated herein by  
16 reference as if set forth at length.

17       124. A trustee may avoid any transfer of an interest of the debtor in property, or any  
18 obligation incurred by the debtor, that was made or incurred on or within two (2) years before the  
19 petition date with actual intent to hinder, delay, or defraud any entity to which the debtor was or  
20 became indebted on or after the date such transfer was made or such obligation was incurred.

21        125. As set forth in detail in this Complaint, the Trustee seeks to avoid the Two Year  
22 Transfers and to recover the value thereof from Defendants.

23           126. Each of the Two Year Transfers was a “transfer” within the meaning of 11 U.S.C. §  
24 101(54).

25        127. Each of the Two Year Transfers was a transfer of property, or of an interest in  
26 property, of one of the Debtors to and/or for the benefit the above-named Defendants.

27 128. Each of the Two Year Transfers was made with actual intent to hinder, delay, or

1 defraud the Debtor’s Estate and its creditors. Among other things, the Halsen Executives personally  
2 benefitted from WHC satisfying the obligations of Halsen Holdings and Halsen Healthcare, entities  
3 controlled by the Halsen Executives (who held equity interests in each either directly, or indirectly)  
4 thereby increasing the value of Halsen Holdings and Halsen Healthcare to the detriment of WHC  
5 and its creditors. The Halsen Executives also personally benefitted from the Transfers made to  
6 Edith (Brothman’s wife), Peninsula Healthcare (owned and controlled by King), South Texas  
7 Associates (owned and controlled by Fowler), and the Note Redemption Transfers that redeemed  
8 notes issued to the Halsen Executives’ friends and family.

9 129. None of the above-named Defendants took any of the Transfers in good faith.

10 130. WHC did not receive value (and certainly not reasonably equivalent value) for any  
11 of the Transfers.

12           131. Therefore, the Two Year Transfers are avoidable pursuant to 11 U.S.C. §  
13 548(a)(1)(A).

132. Under 11 U.S.C. § 550, the Trustee may recover each of the Two Year Transfers or  
their value from the transferee or a subsequent transferee, and may avoid the obligations incurred  
pursuant to the severance agreements.

17       133. Accordingly, Plaintiff is entitled to a judgment against Defendants and any  
18 subsequent transferees for the Transfers in an amount not less than \$630,941.

## **SIXTH CAUSE OF ACTION**

**Recovery of Fraudulent Transfers Made with Fraudulent Intent  
Pursuant to 11 U.S.C. § 544; and Applicable State Law, Including  
6 Del. Code § 1304 and California Civil Code § 3439.04  
(Against All Defendants)**

23        134. The allegations set forth in the previous paragraphs are incorporated herein by  
24 reference as if set forth at length.

25        135. Each of the Transfers listed in Exhibit B hereto (the “Four Year Transfers”) was  
26 made by one of the Debtors and constitutes a transfer of a debtor’s interest in property to one or

1 more of the Defendants within four (4) years of the Petition Date. Exhibit B identifies the date,  
 2 amount, and recipient of each of the Four Year Transfers.

3       136. Each of the Four Year Transfers is avoidable as a “transfer” within the meaning of  
 4 Cal. Civ. Code § 3439.01(m), 6 Del. Code § 1301(12), and 11 U.S.C. § 101(54).

5       137. Each of the Four Year Transfers was a transfer of property, or of an interest in  
 6 property, of one of the Debtors to and/or for the benefit the above-named Defendants.

7       138. The Four Year Transfers each occurred within four years before the Petition Date.

8       139. Each of the Four Year Transfers was made with actual intent to hinder, delay or  
 9 defraud creditors of WHC. Among other things, the Halsen Executives personally benefitted from  
 10 WHC satisfying the obligations of Halsen Holdings and Halsen Healthcare, entities controlled by  
 11 the Halsen Executives (who held equity interests in each either directly, or indirectly) thereby  
 12 increasing the value of Halsen Holdings and Halsen Healthcare to the detriment of WHC and its  
 13 creditors. The Halsen Executives also personally benefitted from the Transfers made to Edith  
 14 (Brothman’s wife) and Peninsula Healthcare (owned and controlled by King) and South Texas  
 15 Associates (owned and controlled by Fowler), and the Note Redemption Transfers that redeemed  
 16 notes issued to the Halsen Executives’ friends and family.

17       140. The Four Year Transfers were each made without receiving reasonably equivalent  
 18 value in exchange for the Transfer.

19       141. At the time of each of the Four Year Transfers, WHC (a) was insolvent or became  
 20 insolvent as a result of the Transfer; (b) was engaged or was about to engage in a business or a  
 21 transaction for which its remaining assets were unreasonably small in relation to the business or  
 22 transaction; and/or (c) intended to incur, or believed or reasonably should have believed that it  
 23 would incur, debts beyond its ability to pay as they came due.

24       142. At all times relevant hereto, the Debtor had at least one general unsecured creditor  
 25 (the “Predicate Creditor”) holding an allowable claim who, but for the Debtor’s bankruptcy filing,  
 26 would have standing to bring claims to avoid and recover the Four Year Transfers. The Predicate

27  
 28

1 Creditors include, without limitation, the Internal Revenue Service and MPT (which was under-  
 2 secured due to its collateral being worth less than the amount it loaned to WHC).

3 143. Therefore, the Four Year Transfers are avoidable pursuant to 11 U.S.C. § 544 and  
 4 applicable state law, including without limitation 6 Del. Code § 1304 and California Civil Code §  
 5 3439.04.

6 144. Under 11 U.S.C. § 550, the Trustee may recover each of the Four Year Transfers or  
 7 their value from the transferee or a subsequent transferee, and may avoid the obligations incurred  
 8 pursuant to the severance agreements.

9 145. Accordingly, Plaintiff is entitled to a judgment against Defendants and any  
 10 subsequent transferees for the Four Year Transfers in an amount not less than \$3,365,560.

11 **SEVENTH CAUSE OF ACTION**  
 12 **Recovery of Constructively Fraudulent Transfers**  
 13 **Pursuant to 11 U.S.C. § 544; and Applicable State Law, Including**  
**6 Del. Code § 1304 and 1305 and California Civil Code §§ 3439.04 and 3439.05**  
**(Against All Defendants)**

14 146. The allegations set forth in the previous paragraphs are incorporated herein by  
 15 reference as if set forth at length.

16 147. Each of the Four Year Transfers is avoidable as a “transfer” within the meaning of  
 17 Cal. Civ. Code § 3439.01(m), 6 Del. Code § 1301(12), and 11 U.S.C. § 101(54).

18 148. Each of the Four Year Transfers was a transfer of property, or of an interest in  
 19 property, of one of the Debtors to and/or for the benefit the above-named Defendants.

20 149. The Four Year Transfers each occurred within four years before the Petition Date.

21 150. The Four Year Transfers were each made without receiving reasonably equivalent  
 22 value in exchange for the Transfer.

23 151. At the time of each of the Four Year Transfers, WHC (a) was insolvent or became  
 24 insolvent as a result of the Transfer; (b) was engaged or was about to engage in a business or a  
 25 transaction for which its remaining assets were unreasonably small in relation to the business or  
 26 transaction; and/or (c) intended to incur, or believed or reasonably should have believed that it  
 27 would incur, debts beyond its ability to pay as they came due.

152. At all times relevant hereto, the Debtor had at least one general unsecured creditor  
1 holding an allowable claim who, but for the Debtor's bankruptcy filing, would have standing to  
2 bring claims to avoid and recover the Four Year Transfers. The Predicate Creditors include, without  
3 limitation, the Internal Revenue Service and MPT (which was under-secured due to its collateral  
4 being worth less than the amount it loaned to WHC).  
5

6 153. Therefore, the Four Year Transfers are avoidable pursuant to 11 U.S.C. § 544 and  
7 applicable state law, including without limitation 6 Del. Code §§ 1304 and 1305 and California  
8 Civil Code §§ 3439.04 and 3439.05.

9       154. Plaintiff is entitled to a judgment against Defendants and any subsequent transferees  
10 for the Four Year Transfers in an amount not less than \$3,365,560.

## **EIGHTH CAUSE OF ACTION**

## **Recovery of Avoidable Preferential Transfers Pursuant to 11 U.S.C. § 547 (Against Halsen Executives)**

13        155. The allegations set forth in the previous paragraphs are incorporated herein by  
14 reference as if set forth at length.

15        156. Each of the Transfers listed in Exhibit E hereto (the “Preferential Transfers”) was  
16 made by one of the Debtors and constitutes a transfer of a debtor’s interest in property to one or  
17 more of the Defendants. Exhibit E identifies the date, amount, and recipient of each of the  
18 Preferential Transfers.

19       157. Each of the Preferential Transfers was made to or for the benefit of a creditor within  
20 one (1) year prior to the Petition Date and, at the time each of the Preferential Transfers was made,  
21 the recipient was an insider.

22        158. Each of the Preferential Transfers was made on account of antecedent debt owed by  
23 one of the Debtors to one or more of the Halsen Executives before such Preferential Transfer was  
24 made.

25        159. At the time of each of the Preferential Transfers, WHC (a) was insolvent or became  
26 insolvent as a result of the Transfer; (b) was engaged or was about to engage in a business or a  
27 transaction for which its remaining assets were unreasonably small in relation to the business or

1 transaction; and/or (c) intended to incur, or believed or reasonably should have believed that it  
2 would incur, debts beyond its ability to pay as they came due.

3 160. The chapter 7 liquidation analysis contained in Exhibit C of the *Disclosure*  
4 *Statement for First Amended Joint Chapter 11 Plan of Liquidation Proposed by the Debtors and*  
5 *Official Committee of Unsecured Creditors* [Docket No. 544] shows that general unsecured  
6 creditors of the Debtors would receive no distribution in a hypothetical liquidation. Accordingly,  
7 the Transfers enabled the Halsen Executives to receive more than they would have received if  
8 (i) WHC's bankruptcy case was a case under Chapter 7 of the Bankruptcy Code, (ii) the Preferential  
9 Transfers had not been made, and (iii) the Halsen Executives received payment of the debt to the  
10 extent allowed by the Bankruptcy Code.

11           161. Based upon the foregoing, the Transfers are avoidable pursuant to 11 U.S.C. §  
12 547(b).

13        162. Plaintiff is entitled to a judgment against Defendants and any subsequent transferees  
14 for the Transfers in an amount not less than \$77,037.35.

**NINTH CAUSE OF ACTION**  
**Recovery of Avoidable Transfers Pursuant to 11 U.S.C. § 550**  
**(Against All Defendants)**

17        163. The allegations set forth in the previous paragraphs are incorporated herein by  
18 reference as if set forth at length.

19 164. Plaintiff is entitled to avoid the Transfers pursuant to 11 U.S.C. §§ 544, 547 and 548  
20 and 6 Del. Code §§ 1304 and 1305 and California Civil Code §§ 3439.04 and 3439.05.

165. The Defendants are the initial transferees, or the immediate, mediate, or subsequent  
transferee, of one or more of the Transfers.

23        166. The Trustee may recover, and intends to recover, the Transfers and benefits  
24 therefrom from any and all mediate, intermediate, or subsequent transferees.

25       167. Accordingly, the Trustee is entitled to avoid and recover the Transfers from the  
26 Defendants pursuant to pursuant to 11 U.S.C. § 550 and applicable law, including without limitation  
27 6 Del. Code § 1307 and California Civil Code § 3439.07.

168. Accordingly, Plaintiff is entitled to a judgment against Defendants and any subsequent transferees for the Transfers in an amount not less than \$3,365,560.

## **TENTH CAUSE OF ACTION**

**Disallowance of all Claims  
Under 11 U.S.C. § 502(d)  
(Against all Defendants)**

169. The allegations set forth in the previous paragraphs are incorporated herein by reference as if set forth at length.

170. Defendants are transferees of transfers avoidable under Section 544, 547 and/or 548 of the Bankruptcy Code, which property is recoverable under Section 550 of the Bankruptcy Code.

171. Pursuant to section 502(d) of the Bankruptcy Code, any and all claims of Defendants and/or their assignees against Plaintiff or the Debtors' estates must be disallowed until such time as the Halsen Executives pay Plaintiff an amount equal to the Transfers, plus interest thereon and costs.

172. Defendants have not satisfied their liability for the Transfers or turned over such property for which Defendant is liable under section 550 of the Bankruptcy Code.

173. Accordingly, each of Defendants' claims in the Chapter 11 Cases, including, but not limited to, the Brothman Claim, the Fowler Claim, and the King Claim, must be disallowed until such time as the Defendants holding such claims pay to Plaintiff the amount equal to the Transfers, plus interest thereon and costs.

**ELEVENTH CAUSE OF ACTION**  
**Disallowance of all Claims of Halsen Executives**  
**Pursuant to 11 U.S.C. § 502(b)**  
**(Against Halsen Executives)**

174. The allegations set forth in the previous paragraphs are incorporated herein by reference as if set forth at length.

175. Pursuant to Section 502(b) of the Bankruptcy Code, if an objection is made to a claim asserted in a proof of claim filed in a bankruptcy case, the Court shall disallow such claim to the extent that (1) such claim is unenforceable against the debtor and property of the debtor, under

1 any agreement or applicable law for a reason other than because such claim is contingent or  
 2 unmatured; (2) such claim is for services of an insider of the debtor to the extent such claim exceeds  
 3 the reasonable value of such services, or (3) such claim is the claim of an employee for damages  
 4 resulting from the termination of an employment contract, and such claim exceeds the  
 5 compensation provided by such contract, without acceleration, for one year following the date on  
 6 which the employer directed the employee to terminate, or such employee terminated, performance  
 7 under such contract.

8       176. Each of the Brothman Claim, Fowler Claim and King Claim assert proofs of claims  
 9 against WHC that arise solely out of the Severance Agreements, which were addendums to their  
 10 pre-existing employment agreements.

11       177. For the reasons described in the previous paragraphs, WHC's entry into the  
 12 Severance Agreements, and the obligations of WHC to the Halsen Executives thereunder, are  
 13 avoidable under 11 U.S.C. §§ 544 and 548, 6 Del. Code § 1304 and 1305, and California Civil  
 14 Code §§ 3439.04 and 3439.05.

15       178. Accordingly, each of the Halsen Executive Claims must be disallowed because the  
 16 Severance Agreements upon which they are based are unenforceable against the debtor and  
 17 property of the debtor under applicable law for a reason other than because such claim is contingent  
 18 or unmatured.

19       179. At the time that the Severance Agreements were executed, each of the Halsen  
 20 Executives was an insider of WHC. The Severance Agreements were insider transactions, without  
 21 independent oversight.

22       180. The Severance Agreement imposed on WHC \$3 million of new obligations to  
 23 insiders without consideration. In fact, on information and belief, the Halsen Executives recognized  
 24 that, because WHC was in default under the MPT Loan, there was a significant likelihood that MPT  
 25 would exercise its proxy rights to remove them from their positions as officers and members of  
 26 WHC's board, and therefor executed the Severance Agreements in an effort to both (a) deter their  
 27 removal and (b) line their own pockets on the way out, rather than in exchange for any new services

1 of value. Accordingly, each of the Halsen Executive Claims must be disallowed because they are  
2 each a claim for services of an insider of the debtor that exceed the reasonable value of the services  
3 provided in exchange.

4        181. Each of the Halsen Executive Claims must also be disallowed because they are each  
5 the claim of an employee for damages resulting from the termination of an employment contract,  
6 and, in each case, the claim seeks amounts exceeding the compensation provided by such contract,  
7 without acceleration, for one year following the date on which the employer directed the employee  
8 to terminate performance under such contract.

9        182. In addition, execution of the Severance Agreements violated Sections 5 and 10 of  
10 the Subordination Agreement by increasing the compensation payable to the Halsen Executives  
11 during pendency of an event of default under the MPT Secured Financing.

12        183. Accordingly, for each of the reasons described in the preceding paragraphs, the  
13 Halsen Executive Claims should each be disallowed in their entirety.

**TWELTH CAUSE OF ACTION**  
**Equitable Subordination of the Halsen Executive Claims**  
**Under 11 U.S.C. § 510(c)**  
**(Against Halsen Executives)**

17        184. The allegations set forth in the previous paragraphs are incorporated herein by  
18 reference as if set forth at length.

19       185. Pursuant to Section 510(c) of the Bankruptcy Code, after noticing and a hearing, the  
20 Court may, under principles of equitable subordination, subordinate for purposes of distribution all  
21 or a part of an allowed claim to all or part of another allowed claim.

22 186. Each of the Brothman Claim, Fowler Claim and King Claim assert proofs of claims  
23 against WHC in connection with the Severance Agreements.

187. The Severance Agreements were insider transactions, without independent  
oversight, that were anything but fair and arms' length.

1       188. The Halsen Executives' decision to cause WHC to enter into the Severance  
 2 Agreements was a violation of their fiduciary duties to WHC and its creditors, intended to unfairly  
 3 enrich themselves, and exacerbated WHC's insolvency, to the detriment of its other creditors.

4       189. On information and belief, the Halsen Executives recognized that, because WHC  
 5 was in default under the MPT Loan, there was a significant likelihood that MPT would exercise its  
 6 proxy rights to remove them from their positions as officers and members of WHC's board, and  
 7 therefor executed the Severance Agreements in an effort to both (a) deter their removal and (b) line  
 8 their own pockets on the way out.

9       190. Execution of the Severance Agreements violated Sections 5 and 10 of the  
 10 Subordination Agreement executed in connection with the MPT Secured Financing by increasing  
 11 the compensation payable to the Halsen Executives during pendency of an event of default under  
 12 the MPT Secured Financing. The allowance of any claim to the Halsen Executives would be  
 13 inequitable to, among other creditors, MPT, because MPT's deficiency claim in the Chapter 11  
 14 Cases is structurally subordinated under the Plan to other general unsecured claims until the holders  
 15 of such claims have received an aggregate distribution in excess of a threshold amount. As of the  
 16 filing of this Complaint, such threshold has not been met. Accordingly, allowing the Halsen Claim  
 17 would effectively allow the Halsen Executives to be paid amounts under the Severance Agreements  
 18 ahead of MPT despite the clear intent of the Subordination Agreement to the contrary.

19       191. For the reasons described in more detail in the previous paragraphs, principles of  
 20 equitable subordination, require the subordination of the Halsen Executive Claims to the prior  
 21 payment of all other general unsecured claims in the Debtors' estates.

22       192. Accordingly, and pursuant to Sections 510(c) of the Bankruptcy Code, each of the  
 23 Brothman Claim, the Fowler Claim, and the King Claim should be contractually, and equitably,  
 24 subordinated to prior payment in full of all other general unsecured claims against the Debtors'  
 25 estates and the Trust.

26  
 27  
 28

1                   **VI. PRAYER FOR RELIEF**

2                   WHEREFORE, Plaintiff Jeremy Rosenthal, solely in his capacity as Liquidation Trustee  
 3 for the WHC Liquidation Trust, prays for relief as follows:

4                   A.       Entry of judgment in favor of the Trustee and against each of the Defendants  
 5 avoiding and recovering the Transfers, in an amount to be determined at trial;

6                   B.       The entry of a judgment in favor of the Trustee and against Defendants Daniel  
 7 Brothman, Stacy Sean Fowler and Edmund C. King holding them liable for their breaches of  
 8 fiduciary duty, in an amount to be determined at trial;

9                   C.       The entry of a judgment in favor of the Trustee and against each of the Defendants  
 10 holding them liable for aiding and abetting the breaches of fiduciary duty by Brothman, Fowler  
 11 and King;

12                  D.       The entry of a judgment declaring that (a) the Halsen Executives and Halsen  
 13 Holdings, (b) Fowler and South Texas Associates, and (c) King and Peninsula Healthcare are  
 14 each alter egos of each other and piercing their respective corporate veils;

15                  E.       The entry of a judgment in favor of the Trustee and against each of the Defendants  
 16 the extent that they were unjustly enriched at the expense of the Debtor;

17                  F.       An award of reasonable attorneys' fees and costs;

18                  G.       An award of pre- and post-judgment interest;

19                  H.       Disallowance of Defendants' claims;

20                  I.       Permission to amend Debtor's pleadings to conform to the evidence at trial; and

21                  J.       Such further and equitable relief as the Court deems just and equitable.

22                   **VII. DEMAND FOR JURY**

23                   Pursuant to Federal Rule of Civil Procedure Rule 38, Plaintiff hereby demands a trial by  
 24 jury as allowed by law.

1 DATED: December 1, 2023

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
**PERKINS COIE LLP**

By: /s/ Paul S. Jasper  
Paul S. Jasper, Bar No. 200138

Amir Gamliel, Bar No. 268121  
PERKINS COIE LLP  
505 Howard Street, Suite 1000  
San Francisco, CA 94105  
Telephone: 415.344.7000  
Email: PJasper@perkinscoie.com  
AGamliel@perkinscoie.com

and

Andrew H. Sherman (admitted *pro hac vice*)  
Boris I. Mankovetskiy (admitted *pro hac vice*)  
SILLS CUMMIS & GROSS P.C.  
One Riverfront Plaza  
Newark, New Jersey 07102  
Telephone: 973.643.7000  
Facsimile: 973.643.6500  
Email: ASherman@sillscummis.com  
BMankovetskiy@sillscummis.com

*Co-Counsel to the WHC Liquidation Trust*

1  
2 **EXHIBIT A**  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

|||

**All Transfers**

# **EXHIBIT B**

## **Four Year Transfers**

## EXHIBIT C

## Two Year Transfers

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT D**  
**Employment Contract Transfers (Two Years)**

**EXHIBIT E**

**Preferential Transfers**

## **EXHIBIT F**

### **Corporate Organization Chart**

## **EXHIBIT G**

### **Living Expenses (Four Years)**